

OCT 07 2019

Clerk, U.S. Courts  
District of Montana  
Helena Division

UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
HELENA DIVISION

STEPHEN KELLY,  
1006 Madison Ave.,  
Helena, MT 59601,  
Plaintiff,

vs.

MONTANA DEPARTMENT OF  
TRANSPORTATION, a state  
entity, and, MIKE TOOLEY,  
in his official capacity,  
2701 Prospect Ave.,  
Helena, MT 59601,  
Defendant(s).

## COMPLAINT

comes now the plaintiff in the above styled action and does show cause for complaint as follows:

(1) This is an action sustained, by STEPHEN KELLY, hereinafter, plaintiff KELLY, and sues the defendant's jointly, the, MONTANA DEPARTMENT OF TRANSPORTATION, a state entity, and, MIKE TOOLEY, in his official capacity, alleging: (a) discrimination, (b) violation of freedom of religion, and, (c) violation of freedom of expression.

## NATURE OF THE CASE

(2) Defendant's are currently violating plaintiffs first amendment rights to, freedom of religion, and freedom of expression.

(3) civil rights is an issue under 42 U.S.C. § 1983.

## PARTIES

(4) Plaintiff, STEPHEN KELLY, is a resident of the state of Montana, and is a subject of defendant's unconstitutional act, and enforcement, of state highway exhibits such as a spiritual type

cross in memory of a  
dead family member as  
such.

(5) GOVERNMENTAL,  
DEFENDANT'S, MONTANA  
DEPARTMENT OF TRANSPORTATION, is a state entity,  
whom which obtains, a  
custom, policy, and practice,  
barring persons from placing  
a religious type cross along  
side a state highway.

(6) DEFENDANT, MIKE  
TOOLEY, acts in his official  
capacity, as director of,  
the Montana department  
of transportation, and is  
an employee as such.

#### JURISDICTION AND VENUE

(7) This court obtains  
subject matter jurisdiction

over this case pursuant  
to 42 U.S.C. § 1983.

(8) Joint defendant's,  
that under public policy  
as such.

#### STATEMENT OF FACTS

(9) Although this case,  
and this court's ruling will  
in fact affect a large  
majority of Montana citizens,  
this is not a class action  
under F.R.C.P. 23, because  
plaintiff is proceeding,  
(Pro-Se).

(10) Plaintiff KELLY, had  
a step son whom which is  
now dead, and on September  
19th, 2019, plaintiff KELLY,  
did in fact place a  
spiritual, and, religious type

cross along side highway twelve in East Helena, (a state of Montana highway). Plaintiff KELLYS act is secured by the United States Constitution, under the first amendment, (a) freedom of religion, and, (b) freedom of expression!

(11) Governmental, defendant's, the, Montana department of transportation, under the direction of defendant, TOOLEY, did in fact remove plaintiff KELLYS, cross, pursuant to a, custom, practice, and policy, which most certainly violates his civil liberties.

(12) Plaintiff KELLYS, constitutional rights are severely violated by defendant's, upon the

aspects of discrimination, where, for example, the defendant's do in fact permit private businesses to obtain bill board signs upon the Montana highway's!

(13) For the defendant's to not allow plaintiff KELLY, to post his spiritual, and religious type cross along side a Montana highway, severely violates his constitutional rights to, (a) freedom of religion, and, (b) freedom of expression.

(14) Legal standing, and plausability, does in fact exists, where plaintiff KELLY, did in fact place a telephone inquiry into the office of defendant's, as to his cross being removed by

the state, and he was directed by, defendant's, to refrain from placing another cross upon any, and all Montana highway's.

#### CLAIM ONE

(15) Defendant's severoy, have violated plaintiff's constitutional liberties, in discriminating against him, where they deprive him of placing a religious and spiritual type cross upon a Montana state highway, yet, defendant's do in fact permit private businesses to post bill board signs along side the highway's.

#### CLAIM TWO

(16) Defendant's, have violated plaintiff's



constitutional liberties,  
to religious freedoms, where  
they deprive him of the  
placing of a spiritual type  
cross.

( CLAIM THREE

( 17 ) Defendant's, have  
violated plaintiffs  
constitutional rights,  
where they deprive him  
of freedom of expression,  
in denying him of placing  
a spiritual type cross.

WHEREFORE, upon the  
premises considered,  
Plaintiff respectfully  
request upon this honorable  
court for the entry of an  
order, (a) finding that  
declaratory judgment shall  
suffice that defendant's

custom, practice, and policy is unconstitutional. (b) The entry of an order enjoining defendant's from enforcing the unconstitutional practice. (c) Award plaintiff with punitive damages in an amount as deemed appropriate by this court.

I declare under penalty of perjury, the foregoing to be true and correct.

Signed this 3<sup>rd</sup> day of October, 2019.

Stephen Kell  
(Signature of Plaintiff)